

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

KELLY LYNN DONOVAN

Plaintiff  
(Responding Party)

and

REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD and  
BRYAN LARKIN

Defendants  
(Moving Party)

**FACTUM OF THE RESPONDING PARTY**  
**(returnable February 13, 2019)**

February 8, 2019

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### PART I – NATURE OF THE MOTION

1. This motion brought by the Defendants for an Order to dismiss this proceeding is done so on the following alleged grounds:
  - a. the Court has no jurisdiction over the subject matter of the action, pursuant to Rule 21.01(3)(a) of the *Rules of Civil Procedure*;
  - b. failing to disclose a reasonable cause of action against the Defendants, pursuant to Rule 21.01(1)(b) of the *Rules of Civil Procedure*;
  - c. the Statement of Claim discloses no reasonable cause of action against the personally-named Defendant and/or is frivolous, vexatious and/or an abuse of the process of the Court and/or the Court has no jurisdiction over the subject matter of the action;
2. The motion brought by the Defendants also seeks an Order for:
  - a. extending the time limits to allow the Defendants to file a Statement of Defence;

- b. abridging or extending the time for service, filing and/or delivery of the Motion Record, the Factum, the Book of Authorities and/or Motion Confirmation;
- c. costs for this motion, on a substantial indemnity basis, fixed and payable to the Defendants within 30 days, pursuant to Rule 57.03(1) of the *Rules of Civil Procedure*; and
- d. such further and other relief as counsel may advise and/or this Honourable Court deems just.

## **PART II – SUMMARY OF FACTS**

- 3. In December, 2010, the Plaintiff accepted the position of police constable with the Defendant Board. From the date of her hiring, the Plaintiff was a contributing member to the police service, was regularly recognized for her contributions and had won awards.
- 4. On May 12, 2015, the Plaintiff was named a YWCA Women of Distinction by the YWCA of Cambridge. A post from the Cambridge Times covering this awards ceremony can be found at Tab 1 of the Plaintiff's Motion Record.
- 5. In June, 2017, the Plaintiff resigned from her employment from the Defendant Board following a complex series of events.
- 6. On May 4, 2016, the Plaintiff made a delegation to the board to disclose wrongdoing from within the police service, at that time, there was no procedural or legislative mechanism for the Plaintiff to disclose internal wrongdoing.
- 7. On May 5, 2016, the Waterloo Record posted an article on the subject of the Plaintiff's delegation. In the article, it states that the Plaintiff refused to speak to the media. This article is available at Tab 2 of the Plaintiff's Motion Record.
- 8. On May 9, 2016, the Plaintiff was served a Chief's Directive ordering her to not continue working as a Use of Force Instructor, but rather she was relegated to administrative duties. This

Directive also ordered the Plaintiff to no appear before the Board again, and she was placed under investigation for 6 allegations of misconduct.

9. On May 11, 2016, The Cambridge Times published an article about the Plaintiff's delegation to the Defendant Board. In the article, the individual Defendant assured the media that the Plaintiff had a democratic right to "vocalize" her "disapproval during the public session of the police board meeting." The individual Defendant was also quoted as saying "They're some strong allegations that we'll review[.]" The entire article is at Tab 3 of the Plaintiff's Motion Record.
10. On May 31, 2016, the Plaintiff was served an additional Chief's Directive ordering her to have to communication with members of the Board and she was placed under investigation for an additional 2 charges of misconduct.
11. On June 2, 2016, the Plaintiff filed a Workplace Harassment Complaint against the individual Defendant (and others not named in this proceeding).
12. The Plaintiff filed a Human Rights Application against the Defendants.
13. During the period from May, 2016, to June, 2017, the Defendant Board did not serve the Plaintiff with a Notice of Hearing, contrary to subsection 83(17) of the *Police Services Act, R.S.O. 1990, c. P.15*, requiring the Defendant Board to do so within six months of the Notice of Investigation being served.
14. In June, 2017, the Plaintiff resigned from employment with the Defendant which brought an end to multiple ongoing proceedings between the parties including the protracted disciplinary investigation and several complaints made by the Plaintiff about the Defendant, to the Ontario Civilian Police Commission, the Office of the Independent Police Review Director and the Human Rights Tribunal.
15. The conditions of the Plaintiff's resignation were that she withdraw her Human Rights complaint, and all other outstanding complaints against the Defendant, and the Defendant would cease their disciplinary investigation. The Plaintiff's resignation terminated multiple ongoing processes.

16. On June 8, 2017, both the Plaintiff and the Defendant signed the resignation agreement (furthermore referred to as the “resignation agreement”) that contained a confidentiality clause pertaining to the contents of the agreement only, but did not contain a general non-disclosure clause. The Plaintiff was adamant that she would not resign from her employment if she was prohibited from speaking about her experiences, and the Plaintiff has waived solicitor client privilege in order to admit evidence in her application to support her intention upon resignation. The redacted resignation agreement can be found at Tab F of the Motion Record of the Moving Party (the Defendants).
17. Both the Plaintiff and Defendant signed mutual releases to not file any new proceedings or appeals for matters arising prior to the Plaintiff’s resignation. The Plaintiff believes that the intention of the resignation agreement was to prevent her from joining the \$167M class action lawsuit that was filed one month before the date of her resignation, (against the Defendant on behalf of all current and former female members of the police service in Brampton Court, court file number CV-17-2346-00).
18. Since resigning, the Plaintiff has campaigned for greater accountability and transparency in Canadian policing, even having spoken at the Ontario Legislature on the topic to improve policing legislation in Ontario. The Plaintiff has also published a book to provide advice to members of police services boards on how to improve governance within Ontario policing. The Plaintiff believes that all of the information she has published and spoken about are matters of public interest, the Plaintiff did not publish any false information or accusations, and the Plaintiff frequently receives accolades from members of the community to support her efforts to improve the ethicality of policing in Canada.
19. The Plaintiff has sold copies of her book to police service board members and is currently working with Ontario police services as a consultant.
20. The Plaintiff has become something of a public figure and expert on policing legislation and internal corrupt practices and has been called on by local media to provide interviews on current issues. The Plaintiff believes her ongoing advocacy has aggravated and angered the Defendant, despite the Plaintiff merely exposing matters in the public interest. The purpose of the Plaintiff’s advocacy is to draw attention to the need for better governance in Ontario police services.

21. The Plaintiff started a consulting business when she resigned to try to earn enough of an income to support her three children. Since December, 2017, the stress the Defendant has caused the Plaintiff has prevented her from fulfilling the activities necessary to build her business.
22. In December, 2017, and in support of his defence in the class action lawsuit, Waterloo Regional Police chief Bryan Larkin referred to the Plaintiff in a sworn affidavit and disclosed details of the resignation agreement. This affidavit became a public document throughout those proceedings. The Plaintiff believes the affidavit is a breach of the terms of the resignation agreement signed by the Defendant. The Waterloo Regional Police Association filed a grievance against the Defendant Board on behalf of other female police officers whose privacy was breached as a result of this same Affidavit.
23. In January, 2018, the Defendant filed an appeal with the Workplace Safety and Insurance Board (“WSIB”) against the Plaintiff’s claim number 30505408. The Plaintiff’s claim for psychology benefits to treat her post-traumatic stress disorder was approved prior to the date of her resignation. The appeal letter is signed by counsel for the Defendant, the same counsel who participated in the creation of the resignation agreement. The Plaintiff believes that this act by counsel is tantamount to deliberate wrongdoing, and is an additional breach of the resignation agreement by the Defendant, since the Defendant had released the Plaintiff from any appeal. The appeal letter can be found at Tab 4 of the Plaintiff’s Motion Record.
24. In May, 2018, the Plaintiff filed the Statement of Claim for breach of contract against the Defendants in the Ontario Superior Court of Justice in Brampton (court file number: CV-18-00001938-0000). The Plaintiff chose to file the breach in Court rather than the Human Rights Tribunal due to the complexity of the issues surrounding her resignation, as is her right.
25. On June 7, 2018, the Defendants filed a Notice of Motion to dismiss the Plaintiff’s action on several grounds, one of which was that jurisdiction for breach of contract lies exclusively with the Human Rights Tribunal.
26. On June 28, 2018, the Defendant Board filed a section 45.9 application against the Plaintiff at the Human Rights Tribunal of Ontario (“HRTTO”) file number 2018-33237-S. This is an application for enforcement of a settlement agreement. This was a strategic and prejudicial move by the Defendant Board, prior to Courts deciding jurisdiction of the Plaintiff’s claim, which deprived

the Plaintiff of her right to procedural fairness and the opportunity to bring her own claim against the Defendant Board to the HRTO.

27. It is the Plaintiff's position that the HRTO proceeding filed by the Defendant Board is a "gag" proceeding, in that the Defendant Board is strategically using litigation as a means of unduly limiting expression by the Plaintiff on matters of public interest. The Plaintiff did not agree to a non-disclosure clause when she resigned in July, 2017, yet the Defendant is now alleging that any expression the Plaintiff has made publicly has been a breach of her resignation agreement.
28. The HRTO application filed by the Defendant was done out of retaliation, is vexatious, an attempt to further harass the Plaintiff, deteriorate her mental health and prevent her from operating her business which is her only source of income by burdening her with the task of defending herself in the HRTO proceeding and WSIB appeal. The Defendant seeks the following remedy at the HRTO:
- a. Significant damages, assessed with reference to the revenue generated by the Plaintiff through her expressions used to generate work for her business;
  - b. Cease to make any further expression about the Defendant;
  - c. Redact allegations against the Defendant from the Plaintiff's book;
  - d. Remove from the public domain any other allegations the Plaintiff has made against the Defendant.
29. On September 25, 2018, the Plaintiff filed an Application at Ontario Superior Court of Justice, (CV-18-00605386-0000), to have the HRTO application filed by the Defendant Board, pursuant to section 137.1 of the *Courts of Justice Act*.
30. On January 10, 2019, the Parties appeared before Madam Justice Favreau where it was decided that *Courts of Justice Act*, section 137.1 does not apply to Tribunal matters. In her decision, *Donovan v. (Waterloo) Police Services Board, 2019 ONSC 818*, Madam Justice Favreau states at para. 55:

- a. “While I have found that this Court does not have the authority to dismiss the Board’s application to the Human Rights Tribunal, there is no doubt that Ms. Donovan raises legitimate concerns about whether the Board’s application is a justified effort to prevent her from speaking out about her experience as a police officer with the Board. In the circumstances, in my view, while she has been unsuccessful, Ms. Donovan’s application to this Court was not frivolous or unreasonable.” See **Tab 1** of the Plaintiff’s Book of Authorities for the full decision.

31. The HRTO proceeding filed by the Defendant Board is a collateral attack against the Plaintiff, as opposed to filing a counter-claim or statement of defence, the Defendant Board chose to apply to dismiss the Plaintiff’s action and file against the Plaintiff in another legal venue, one which is exempt from Ontario’s anti-SLAPP laws.

32. On January 16, 2019, the Plaintiff filed an amended Statement of Claim, on consent, to include the second allegation of Breach of Contract by the Defendants, listed above at para. 23.

### **PART III - ISSUES AND LAW**

#### **Do the Courts have jurisdiction to proceed with the Plaintiff’s claim?**

33. Contrary to what is stated in paragraph 1.(a) of the Defendants’ Factum, the essential character of this dispute is not the enforcement of a human rights settlement.

34. As indicated above, the issues resolved in the resignation agreement, in chronological order, are:

- a. Police Services Act investigation against the Plaintiff;
- b. The Workplace Harassment complaint against the individual defendant by the Plaintiff;
- c. The Human Rights Application made against the Defendants by the Plaintiff; and
- d. The complaint about the conduct of the Defendants to the Ontario Civilian Police Commission by the Plaintiff.

35. The Human Rights Tribunal of Ontario (“HRTO”) enforces settlements arising solely out of breaches of the *Code*. The Plaintiff’s claim does not arise solely out of breaches to the *Code*.

#### **A. Donovan v. (Waterloo) Police Services Board, 2019 ONSC 818**

36. Regarding proper jurisdiction of an allegation of breach of contract pertaining to the resignation agreement between the Plaintiff and the Defendants, Honourable Justice Favreau had this to say at para. 51:

- a. “The Board also argues that the Human Rights Tribunal has exclusive jurisdiction over issues related to the enforcement of the Resignation Agreement. A similar issue is being raised by the Board on the motion to be heard on February 13, 2019, in the context of Ms. Donovan’s civil action. While it is not necessary for me to decide this issue in the context of this motion, I note that it is not clear to me that the Human Rights Tribunal has any jurisdiction over the Board’s application, let alone exclusive jurisdiction. Evidently, there were many issues between the parties that led to the Resignation Agreement. One of these issues was an application made by Ms. Donovan to the Human Rights Tribunal. Under the circumstances, it is difficult to see how the Tribunal has exclusive jurisdiction over the issue of whether the Resignation Agreement precludes Ms. Donovan from making the public statements targeted by the Board. Ultimately, it will be up to the Human Rights Tribunal to decide whether it has jurisdiction over the matter.”

37. The Defendants argument that a breach of the terms of the resignation agreement would fall under the purview of the HRTO or Workplace Safety and Insurance Appeals Tribunal is disingenuous.

38. In paragraph 50, Justice Favreau states:

- a. “In its argument, the Board suggested that its application to the Human Rights Tribunal would not be caught by section 137.1 because it is simply trying to enforce the Resignation Agreement. In my view, this argument is disingenuous. Section 137.1(3) does not limit the causes of action susceptible to its application. It may turn out that the Resignation Agreement provides a justification for the Board’s attempt to interfere with Ms. Donovan’s public expression, but the fact that the underlying proceeding is about the enforcement of an agreement does not out this Court’s jurisdiction to deal with the issue.”

## **B. Anderson v. Tasco Distributors, 2011 ONSC 269**

39. In their Notice of Motion, the Defendants state that the HRTO has exclusive jurisdiction over allegations of breach of the Applicant’s resignation agreement. The Applicant disagrees.

40. In *Anderson v. Tasco Distributors*, 2011 ONSC 269, Superior Court Justice Echlin wrote that Courts do have the jurisdiction to hear proceedings that do not arise solely from an alleged breach of the *Ontario Human Rights Code* (the “Code”).
41. The Plaintiff asserts that her allegations do not arise from alleged breaches of the *Code* and as such, the Courts do have jurisdiction to hear her claim.
42. Reference the Plaintiff’s Book of Authorities, Tab 4, for the complete decision in *Anderson v. Tasco Distributors*, 2011 ONSC 269.

### **C. Power Tax Corporation v. Millar et al., 2013 ONSC 135**

43. In *Power Tax Corporation v. Millar*, 2013 ONSC 135, the defendant Ms. Millar brought an application before the Human Rights Tribunal of Ontario. Subsequently, Power Tax brought an application to Court. Justice Goldstein ruled in favour of Ms. Millar and called the application by Power Tax an abuse of process. Power Tax’s application was permanently stayed. See Tab 5 for the entire decision.
44. Paragraph 16 of the Power Tax decision described the doctrine of abuse of power in greater detail for the Honourable Court to consider.

### **Does an Arbitrator have jurisdiction over breach of contract?**

45. From the time the Plaintiff first found herself in need of assistance from her association, the Waterloo Regional Police Association (the “Association”), that assistance was denied.
46. The position taken by the Association President, Mr. Paul Perchaluk, in 2016, was that since the Plaintiff was not “on-duty” when she presented her delegation to the Defendant Board, the repercussions of that delegation were for the Plaintiff to deal with on her own. According to Article 12.01 of the Collective Agreement, (included at Tab A of the Defendants’ Motion Record), Association only offers indemnity for legal expenses incurred in the course of their employment.

47. Article 42 of the Collective Agreement offers a grievance procedure to “members.” The Plaintiff is no longer a member of the bargaining unit.
48. The Plaintiff ceased to be a member of the Association on June 25, 2017, and has not paid any member dues to the Association since prior to that date.
49. The allegations contained in this claim pertain to actions by the Defendants after the date the Plaintiff’s employment ended.
50. There can be no dispute by the Defendants regarding the status of the Plaintiff’s membership with the Association.
51. Police Services Act, subsection 116(1), included at Tab 25 of the Book of Authorities of the Moving Party (Defendants), states:
  - a. 116(1) If there is a dispute as to whether a person is a member of a police force or a senior officer, any affected person may apply to the Commission to hold a hearing and decide the matter.
52. The Plaintiff is not a member of a police force and no longer enjoys the benefits or representation of the Association.
53. Paragraphs 26 through 29 of the Defendants’ Factum rely on this dispute arising expressly or inferentially out of the collective agreement between the Association and the Defendant Board.
54. As succinctly stated in paragraph 27 of the Defendants’ Factum;
  - a. “The WRPA, a signatory to the Resignation Agreement along with the Plaintiff and the WRPSB, has exclusive representation rights in respect of its members (including the Plaintiff) for all terms and conditions of employment.”
55. The Plaintiff argues that this matter does not fall within the terms of the collective agreement.
56. There are no provisions in the Police Services Act and Regulations that require the Plaintiff to seek restitution through the Association for an alleged offence committed by the Defendants after the date her employment ceased.
57. In paragraph 30 of the Defendants’ Factum, they cite *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*. The Plaintiff asserts that her resignation from the Defendant Board was governed neither by the collective agreement in place between the Defendant Board and Association, nor the applicable police services legislation.
58. At Tab 8 of the Defendants’ Book of Authorities is the complete decision. Paragraph 9 states:
  - a. “She emphasized that the resignation whose validity was at issue was tendered in a disciplinary context... the issues raised were not governed by the collective agreement and were not arbitrable.”

59. Contrary to the situation in *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, there are no provisions in the collective agreement between the Defendant Board and the Association regarding the resignation of a member. The Plaintiff argues that the outcome in the cited case is not comparable to the case currently before the Court.
60. As the Association was not involved in the Plaintiff's employment issues, from the initial discipline in 2016 until her eventual resignation, for the Defendants to suggest at this point in time that this matter is best resolved through the Plaintiff's prior affiliation with the Association is self-serving and germane to their desire to dismiss the Plaintiff's claim.
61. The Defendants entered into a contract with the Plaintiff, not governed by the existing collective agreement or any police statute, and on two occasions have violated that agreement.

### **Is the Plaintiff suing the Defendant Board for a workplace injury?**

62. At paragraph 32 of the Defendants' Factum, they quote the Workplace Safety and Insurance Act in an attempt to dismiss the Plaintiff's claim as if she is suing the Defendant Board for a workplace injury. This simply is not the case and this argument is a moot point.
63. As stated at paragraph 6 of the Amended Statement of Claim, the Plaintiff is alleging that the Defendant Board breached the release contained in the resignation agreement by filing an appeal with the Workplace Safety and Insurance Board. Regardless of where this appeal was filed, it is the filing of the appeal that the Plaintiff alleges breaches the terms of the resignation agreement, not the fact that the appeal was related to a workplace injury.

### **Is it plain and obvious there is no reasonable cause of action?**

64. The Defendants are relying on parallel legislation governing workplace injuries and labour relations to strike the Plaintiff's claim.
65. The Plaintiff has presented the Court with two basic breaches of a legal agreement entered into by the Plaintiff and the Defendants.
66. As the Defendants are public officers, the Plaintiff believes a greater duty of care exists for the Defendants to abide by the terms and conditions contained in the resignation agreement.
67. The Plaintiff has asked for reinstatement as a remedy simply because her voluntary resignation hinged on the fact that the terms and existence of the agreement would remain confidential, and she would continue to receive psychological care and medication for her Post-Traumatic Stress Disorder. The Plaintiff is required to earn an income to support her three children, and would

not have resigned from her employment, where she earned in excess of \$100,000 per year, if she believed that the Defendants would simply ignore their responsibilities under the resignation agreement.

68. The Defendant Board appealed her claim for medical assistance, which is an obvious breach of the contract and is a deliberate action to eliminate any care currently being provided for the Plaintiff. If the Plaintiff knew that 7 months following her resignation, action would be taken by a public body to deliberately breach the resignation agreement, she would not have agreed to sign the resignation agreement. The Plaintiff has higher expectations for the conduct of public officers.
69. The same counsel who represented the Defendant Board and wrote the resignation agreement was the same counsel who signed the appeal letter to the Workplace Safety and Insurance Board. Not only was this a breach of the resignation agreement, but the act is tantamount to misconduct by said counsel.
70. Despite the Defendant Board choosing to not pursue an appeal, the fact remains that the appeal was filed and the Plaintiff had no choice but to face the ongoing harassment and mental aggravation brought on by the actions of the Defendant Board. See Tab 4 of the Plaintiff's Motion Record for the Appeal letter filed by Mr. Donald Jarvis to the Workplace Safety and Insurance Board.

### **Did Chief Larkin have absolute privilege?**

71. When the individual Defendant swore the Affidavit in defence of the ongoing class action lawsuit against the Defendant Board, he was not acting as an expert witness, a judge or an advocat.
72. In *Amato v. Welsh*, 2013 ONCA 258, absolute privilege is defined in paragraph 1 as follows:
  - a. "The common law doctrine of absolute privilege protects judges, counsel, jurors, witnesses and parties from any action "for words spoken in the ordinary course of any proceedings before any court or judicial tribunal recognised by law", so long as the words sought to be cloaked with the privilege were "uttered for the purposes of judicial proceedings by someone who has a duty to make statements in the course of the proceedings." See Tab 7 of the Plaintiff's Book of Authorities for the full decision.
73. The individual Defendant did not have a duty to make statements in the course of the class action lawsuit, and therefore it is the Plaintiff's position that the individual Defendant does not have absolute privilege in this case.

74. The individual Defendant's affidavit supplied for the ongoing class action lawsuit was not required by law or required under any statute or agreement. It was supplied to Courts to attempt to disguise the current state of internal affairs within the Defendant Board.

### **Does the resignation agreement preclude the Defendant Board from appealing the WSIB claim?**

75. The Plaintiff has received treatment from Dr. Kathy Lawrence approximately once per week since the date of her resignation. Those sessions cost approximately \$250 each. Since the date of the Plaintiff's resignation from employment, this amount is approximately \$20,583.33 that the Plaintiff would have had to spend on her mental health treatment, if she did not have a current claim with WSIB. The Plaintiff does not know the cost of her current prescribed medication, which is also being paid by WSIB.

76. It was very important for the Plaintiff to maintain health coverage through the WSIB following her resignation so that she could continue to improve her overall health, which had deteriorated as a result of her employment for the Defendant Board.

77. The Defendant Board had initially proposed that the Plaintiff withdraw her WSIB claim, and resign with no mental health support. The Plaintiff had to negotiate that her claim be allowed to survive her resignation.

78. Despite their signing a release to not file any "appeals" against the Plaintiff, and despite their public commitments to the wellness of their officers, the Defendant Board filed an appeal of the Plaintiff's claim which would have eliminated the funding for mental health support she was receiving and prescribed medication. Had the Defendant Board's appeal been successful, the Plaintiff would have been left with no mental health supports.

79. The Defendant Board believes that because their appeal was unsuccessful, this precludes them from any accountability to their responsibilities in the resignation agreement.

80. The Plaintiff asserts that by signing the resignation agreement, the Defendant Board had promised not to file the appeal in the first place, yet they did.

### **Is the Plaintiff's claim an unnecessary expenditure of limited judicial resources?**

81. Prior to the Plaintiff's resignation, she had accessed parallel judicial resources such as her Association and the Human Rights Tribunal. Failing the involvement of either of those bodies, the Plaintiff resigned from her employment.

82. The Plaintiff brings this claim before the courts now because she believes the Defendants have ignored their responsibilities to the resignation agreement and have deliberately caused the Plaintiff stress, anxiety and fear that she may face ongoing litigation for expressing herself on matters of public interest to attempt to improve accountability and transparency in Canadian police services.
83. The Defendants allege that the Plaintiff's action is "not only duplicative, but amounts to an unnecessary expenditure of limited judicial resources." The Plaintiff stands strong on the fact that she only filed one proceeding against the Defendants; this civil action. Since that time, it is the Defendants who filed their collateral attack at the Human Rights Tribunal, creating the duplicity. It is defamatory for the Defendants to blame the Plaintiff for this unnecessary expenditure of judicial resources.
84. The Plaintiff utilized the judicial system since her resignation was complex and did not address only one aspect of her prior employment. It is evident in Justice Favreau's decision that she also believed the Plaintiff's resignation was a complex matter.
85. The Plaintiff has no doubt that the Defendants would prefer to not address her allegations in a Court of Law, however, being public officers, the Plaintiff believes it is that much more important that her claim be heard by an Honourable Justice in advance of the retaliatory claims made by the Defendants being heard at the Human Rights Tribunal on February 22, 2019.

#### **PART IV – PROCEDURAL FAIRNESS**

86. In the interest of procedural fairness, it is the Plaintiff's position that actions taken by the Defendants to launch a collateral attack against her is tantamount to malfeasance.
87. As stated in paragraph 21 of *Baker v. Canada (Minister of Citizenship & Immigration)*, 1999, 2 S.C.R. 817:
- "The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decision affecting their rights, interests, or privileges made using a fair, impartial and open process, appropriate to the statutory, institutional and social context of the decisions."
88. Reference the Plaintiff's Book of Authorities, tab 6, for the complete decision in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

89. The Plaintiff's claim contains two basic breaches of the resignation agreement. The Plaintiff agrees that the first breach is arguable, yet the second breach is clear and concrete. On this basis alone, the Plaintiff believes her claim should not be dismissed and that public officers, such as the Defendants, be held to a higher standard of compliance to legal agreements signed in good faith.

## **PART V – ORDER REQUESTED**

90. The Plaintiff seeks an order to dismiss the Defendants' motion and allow her claim to proceed expeditiously, as the continued litigious harassment is continuously deteriorating her health and ability to earn an income. It was not the Plaintiff who created a web of ongoing litigation, but rather the Defendant Board in an attempt to cast a negative light on the actions of the Plaintiff.

91. The Plaintiff also seeks an order for costs on a substantial indemnity basis, fixed and payable by the Defendant to the Plaintiff within 30 days, pursuant to Rule 57.03(1) of the Rules giving consideration to the following points:

- a. The Defendant strategically filed their gag proceeding at the Human Rights Tribunal to attempt to limit the Plaintiff's access to justice through the Court;
- b. After the Plaintiff filed her statement of claim in May, 2018, the Defendant could have filed a counter-claim, however chose to strategically file their allegation of breach of contract as a gag proceeding disguised as a contravention of settlement at the Human Rights Tribunal. It is the Plaintiff's position that this step was improper and vexatious, as well as untimely and beyond the limitation period.

February 7, 2019

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